IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPEAL NO. 449 OF 2000

Jaishree Ramchandra Mayekar,
Life Convict Prisoner No. 564,
Yeravada Central Prison,
Pune - 411 006. .. APPELLANT

VERSUS

The State of Maharashtra. .. RESPONDENT

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Shri V.N. Kamble, Advocate appointed for the appellant.
Smt.V.R. Bhosale, APP for the respondent State.

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CORAM : N.V.DABHOLKAR
AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : JANUARY 18, 2006

ORAL JUDGMENT :

(PER DABHOLKAR, J.)

1. Present appeal under section 374 (2) of the Code of Criminal Procedure, 1973 arises from judgment and order dated 11.11.1998 delivered by Additional Sessions Judge, Gr. Mumbai in Sessions Case No. 88 of 1996. In fact, two accused i.e. present appellant and one Damu Govind Solkar were tried by the

said sessions case for the offences punishable under sections 302, 201 r/w 34 of the Indian Penal Code. At the conclusion of the trial, both of them were held guilty and sentenced to suffer life imprisonment and rigorous imprisonment for two years, on respective counts. They are also sentenced to fine and default sentences separately on each count. The substantive sentences are ordered to run concurrently. Original accused No.1 has challenged the said judgment and order by present appeal. (As will be evident from the orders passed by this Court on 15th September 2004 and office endorsement dated 24th September 2004, no appeal appears to have been preferred by original accused Damu, even after calling for a fresh report whether original accused No.2 has preferred an appeal challenging the said decision, may be at a belated stage; the office has reported in the negative.)

2. The prosecution story can be summed up as follows :

. The incident in question took place on 12.9.1995. The victim of the incident Ramchandra Vishram Mayekar was husband of present appellant Jaishree. It is the prosecution case that appellant

maintained illicit relations with accused No.2 Damu and in order to continue the maintenance of such relationship to which deceased Ramchandra was a natural obstruction, being husband of Jaishree, he was nipped into bud.

3. In order to establish the guilt, prosecution has examined as many as eleven witnesses and in the order of their importance for the purpose of prosecution, they can be described as under :

. PW 4 Dnyangeeta Mayekar is the daughter of accused No.1 and deceased Ramchandra and she is examined as an eye witness. PW 2 Suresh Magare and PW 3 Chandrakant Kadam are residents of vicinity. They are examined for duel purpose. It is the claim of both these witnesses that in the early dawn hours at about 3.30 or 4.00 a.m. of 12.9.1995, they had seen accused No.2 entering the house cum hut of deceased and accused No.1. They are the persons who had been to Police Station Kanjur Marg for reporting that the dead body of deceased Ramchandra was found in a Nala in the locality, in prostrate position and hence unidentified while reporting. It appears that the report by PW 2 Suresh is treated by police as First Information Report, after

identification of the dead body when it was retrieved from Nala.

. PW 1 Subhash Ghuge and PW 5 Bharat Daware are panch witnesses. Weapon of the offence scythe is said to have been recovered at the instance of information given by accused No.2 and A.P.I. Shri Jagannath Sawant (PW 10) was the Investigating Officer associated with the event of discovery. The memorandum and discovery panchanama are at composite Exh.6. A composite document was prepared which is at Exh.25 and PW 5 Bharat is a panch witness to the same. P.S.I. Raghunath Kokate (PW 8) is the Investigating Officer associated with the events in the said document. This document includes inquest panchanama of the spot and also seizure of some articles from the spot. Police Inspector Madhukar Pawar (PW 11) is other Investigating Officer in the matter.

. PW 7 Mohd. Kudrus is an unauthorised dealer in hardware and the two accused are said to have purchased the weapon from him.

. Dr. Manohar Shivsharan (PW 9) then attached to J.J. Hospital, Bombay had performed post mortem on the dead body of Ramchandra. According to post mortem notes

(Exh.45), he has recorded cause of death to be shock i.e. haemorrhagic shock due to multiple incised injuries. Dr. Bajrang Kharat (PW 6), then attached to Rajawadi Hospital as Medical Officer, upon reference, had clinically examined accused No.2 and noticed as many as six injuries upon the person of the said accused.

4. On reference to statement under section 313 of the Code of Criminal Procedure, 1973, it seems to be the defence of both the accused that they are implicated in a false case. Accused No.2 claimed that he was assaulted by police at the police station, while explaining the injuries upon his person, as observed by Dr. Bajrang Kharat.

. Present appellant has claimed that the victim Bajrang had not returned home since 9.9.1995. In fact, he was allotted a telephone booth for handicapped. The said booth was situated opposite Menon College. She claims that her daughter Dnyangeeta is deposing false against her because she is so tutored by the police. Earlier also during the statement under section 313 of the Code of Criminal Procedure, she claims that on 12.9.1995 her husband was not at home.

5. The learned Trial Judge has practically utilised paragraphs 15 to 40 for taking into consideration the evidence of all eleven witnesses by narration and he has summed up thus in paragraph 41 :

> "As such in brief, it may be stated here that PW 2 and 3 have given the evidence in respect of entry of accused No.2 in the hut of accused No.1 and his earlier visits to the said hut. PW 4 has given evidence as to how the incident had occurred and as to how her father was assaulted by accused No.2. One of the doctors has given evidence in respect of the injuries found on the persons of accused No.2. Another doctor has given evidence in respect of the injuries found on the person of deceased Ramchandra Mayekar and cause of his death. PW 8 who has done major portion of investigation has given evidence in respect of recording of F.I.R., inquest panchanama and spot panchanama. PW 5 has also given evidence in respect of spot panchanama. PW 10 and 11, the two police officers and PW 1 the panch witness have given evidence in respect of recovery of Koyata and underwear at the instance of accused No.2. PW 7 Mohd. Kudrus

has stated that Koyata (Article A-1) was sold by him to the accused Nos. 1 and 2. Most of the witnesses have denied suggestions made to them by the learned Advocate for the defence."

. For the reasons discussed in paragraphs 43 and 44, by taking into consideration the nature of injuries on the person of the victim, as noted in the post mortem notes, the learned Sessions Judge arrived at a conclusion that the death was certainly homicidal. He has also relied upon the commentary from the book of Medical Jurisprudence by celebrated author Dr. Modi.

. After considering the evidence of all the witnesses, for the reasons discussed in paragraph 50 onwards of his judgment, the learned Sessions Judge recorded his conclusions in paragraph 75, as follows :

"Evidence of PW 1 and 11 discussed hereinabove, brings the Court to following conclusions :

(1) That accused No.2 had entered the hut of accused No.1 in the early hours of 12th September 1995;

(2) Accused Nos. 1 and 2 had purchased a Koyata which was kept in the hut of accused No.1;

(3) Accused No.2 had inflicted multiple injuries on deceased Ramchandra Mayekar by means of Koyata;

(4) Deceased Ramchandra Mayekar had died due to the said multiple injuries;

(5) Dead body of the deceased was thrown in the gutter by accused No.2;

(6) Accused No.1 was present at the time of alleged assault on the deceased by accused No.2;

(7) Accused No.1 had directed her daughter PW 4 to go to bed when the deceased was being assaulted;

(8) Human blood stains were found on different articles in the said hut and on the floor of the hut;

(9) The bed sheets, saree, carpet and plastic

> sheets were found stained with human blood and bed sheets were found to be washed locally."

. It is evident from the conclusions reproduced hereinabove that the learned Trial Judge has found the prosecution evidence convincing including the eye witness account given by daughter Dnyangeeta, evidence of discovery, evidence of purchasing of weapon by the two accused etc. The conclusions at Sr.Nos. 1, 2, 6 and 7 are important so far as present appellant / original accused No.1 is concerned.

6. The learned Judge concluded thus in paragraph 78 while holding present appellant guilty for offences punishable under sections 302, 201 of the Indian Penal Code by virtue of section 34 of the Code :

> "Sharing of intention by the co-accused is to be gathered from the evidence adduced by the prosecution. It is needless to say here that the evidence adduced by the prosecution discussed hereinabove is more than sufficient to say that accused No.1 had shared intention of accused No.2 to kill the deceased Ramchandra Mayekar. Both of them had purchased a Koyata,

> the said Koyata was kept in the hut of accused No.1, accused No.2 had entered hut of the accused No.1, accused No.1 did not make any hue and cry but on the contrary, she directed her daughter PW 4 to go to bed and also warned her that she should not disclose this fact to anybody else. In my opinion, these facts are sufficient enough to come to the conclusion that accused No.1 had shared intention of accused No.2."

. Consequently, the Judge concluded that the offence of murder was committed in furtherance of common intention by both the accused and they have, in furtherance of their common intention, caused disappearance of evidence by throwing the dead body in Nala and by washing the clothes.

7. Heard Advocate Shri V.N. Kamble for the appellant and APP Smt. Bhosale for the State. At the commencement of his arguments, we had pointed out to Advocate Shri Kamble that no overt act is attributed to appellant / original accused No.1. Even according to the evidence led by the prosecution on record, accused No.2 is alleged to have inflicted fatal blows. It was

accused No.2 who is said to have removed the dead body from the residence of accused No.1 and thrown in the Nala. We expected Advocate Shri Kamble to lay emphasis, during the course of his arguments, on the aspect of common intention. But Advocate Shri Kamble has preferred to challenge the prosecution claim that it has proved Ramchandra to have been murdered by accused No.2. Consequently the learned counsel has taken us through entire prosecution evidence as also the impugned judgment as and when necessary for the purpose of supporting his arguments. The points raised by Advocate Mr. Kamble mainly challenged reliability of the prosecution evidence and his argument can be summed up thus. According to him, star witness of the prosecution Dnyangeeta being a child witness, is required to be considered with due caution and a possibility can not be ruled out that she is deposing as tutored by the police. In fact, Advocate Shri Kamble did not hesitate to argue that the police officers, in order to show that one murder mystery is resolved, have converted their mental conviction of accused Nos. 1 and 2 being the culprits into a charge sheet by weaving a net of false pieces of evidence around them. According to Advocate Shri Kamble, PW 2 and PW 3 namely Suresh and Chandrakant are also unreliable on the point of having seen accused No.2

entering the house of accused No.1 and the deceased, at the alleged time. He also assailed discovery evidence as unreliable and panchanama to be a tailor made document for the purpose. In order to support such line of argument, he has relied upon the discrepancies and variances in the depositions of witnesses inter se.

. He pointed out that PW 4 Dnyangeeta and PW 7 Mohd. Kudrus (hardware vendor) are discrepant as to who had come to purchase the scythe. According to Dnyangeeta, she had accompanied mother for the purpose whereas Mohd. Kudrus has claimed that both the accused had come to him for purchasing the weapon. Although there is considerable distance between the hut where the murder is alleged to have taken place and the location where the dead body was thrown, nobody has seen blood stains from the hut to that location. According to him, PW 2 has admitted his unawareness of victim having returned home on the earlier night and hence he urged that narration of appellant that victim had not returned home since 9.9.1995, is probablised. Panch witness Bharat (PW 5) has admitted that the hut has only one entrance and thus according to Advocate Shri Kamble, falsifies the version of Dnyangeeta that accused No.2 used to enter the hut from the back side. Although PW 2

and PW 3 both claimed to have seen accused No.2 entering the house of accused No.1 at the alleged time, none of them have noticed presence of each other and hence Advocate Shri Kamble desired this Court to disbelieve their version on the point of entry of accused No.2 on the scene. He also referred to opinion recorded by the Medical Officer that the injuries were suffered within three hours since last meals and, therefore, inferred that death could not have ensued at about 3.30 or 4.00 a.m. because in that case, victim will have to be considered to have taken his meals at about 12.30 midnight. Lastly he also relied upon narration of PW 2 who said that police did not write anything although he narrated everything and tried to develop an argument that police have obtained signature of PW 2 on the document Exh.31, treated as first information report some time later on.

8. Having gone through the impugned judgment, it can be seen that almost all the points raised by learned counsel for the appellant were also raised by his counter part in the Trial Court and are squarely dealt with by the learned Trial Judge. For the reasons discussed in earlier part of the judgment, the learned Judge in paragraph 49 arrived at a conclusion

that although there is no evidence regarding illicit relationship of accused 1 and accused 2, there is ample evidence to show that accused No.2 was a frequent visitor to the house of accused No.1 and this was disliked by the deceased husband of accused No.1. We have no hesitation to agree with this conclusion of learned Trial Judge. After all, direct evidence of illicit relationship is not likely to be available. As a course of natural human conduct, illicit relationships are rarely maintained with openness. PW 2 and PW 3 have not been able to depose much except saying that accused No.2 was frequently visiting the house of accused No.1, although sleeping on over bridge of railway, he was keeping his bed and bedding in the house of accused No.1 and that they had seen them together in the market place. It appears that during the cross examination, admissions are obtained that they had not seen the two accused in compromising position. It must be said that it is practically impossible to have evidence of illicit relationship in such naked form. We, therefore, concur with the Trial Judge that prosecution has brought on record in the form of depositions of PW 2 and PW 3 sufficient evidence that accused No.2 was regular visitor of house of accused No.1 and, therefore, there used to be quarrels between deceased and the appellant.

From the depositions of PW 3 Chandrakant and daughter Dnyangeeta, it is also evident that, to some extent, deceased was blind by one eye and may be accused No.2 was a better individual in the estimation of accused No.1. PW 2 and PW 3 being residents of locality, they are deposing about the illicit relationship between the two accused by their general perception of the daily happenings. In paragraphs 51 to 56, learned Judge considered the case law cautioning the Courts about assessment of evidence of child witnesses and child witnesses being prone to tutoring and consequent danger of child witnesses being tutored false evidence. No doubt, prosecution has admitted that the child was kept in an orphanage at Lonawala. For the purpose of evidence, Dnyangeeta was brought from Lonawala to Kanjur Marg Police Station from police vehicle, on earlier day. She camped at the police station on the night in company with a lady constable who was kept as care taker. Inspite of this, for the reasons discussed in paragraphs 59 to 65, the Trial Court has held Dnyangeeta to be a reliable witness. By referring to its own observations regarding demeanour, Trial Court has held that it did not find Dnyangeeta to be a tutored witness.

. So far as tutoring of the child witness is

concerned and since it is the contention of Advocate Shri Kamble that three Investigating Officers are interested in boasting that they had solved murder mystery, they must have tutored the child witness. On reference to depositions of PW 8, PW 10 and PW 11, we have taken a note of the fact that none of them was attached to Kanjur Marg Police Station at the time of recording of evidence. In the month of August 1998, they were attached to S.B.I. C.I.D. and not to Kanjur Marg Police Station. The evidence of Dnyangeeta is recorded on 18th August 1998 whereas evidence of these three police officers is recorded on 8th, 9th and 11th September 1998. Since the child was kept in an orphanage, it is evident that the child was not in the custody of any relative having an interest adverse to either accused No.1 or accused No.2. We feel that this factual situation speaks against the possibility of Dnyangeeta being tutored. As rightly observed by learned Trial Judge (evidence of Dnyangeeta is discussed in paragraphs 59 to 65), statement of Dnyangeeta was recorded on the same day after securing her presence from the school at about 10 a.m. during recess. The defence has not obtained any contradiction from her with her statement that was recorded by police. Had there been some tutoring, some contradictions ought to have

occurred. We, therefore, concur with the Trial Judge that there is nothing on record to believe that Dnyangeeta was a tutored witness.

. Failure on the part of PW 2 and PW 3 to notice each others presence, although they simultaneously claim to have seen entry of accused No.2 in the hut of accused No.1, is discussed by the learned Judge in paragraph 57. We may not hesitate to say that it was sheer failure on the part of the two witnesses to notice each others presence. Otherwise also, PW 2 had got up from sleep for passing urine and PW 3 Chandrakant was commencing his daily routine who was proceeding towards railway station. We do not think that their admission of not having seen each other, although both of them were outside their house at the material time, is sufficient to draw an inference that their claims of having seen accused No.2 entering the house of accused No.1, are false one.

9. Accused No.2 was referred to Medical Officer and PW 6 Dr. Kharat has noticed some bruises, scratches and lacerated injuries on his person. Since prosecution has relied upon this situation to lead the Court to an inference that there must have been some resistance from the victim, the accused No.2 has claimed

that he was beaten by police at the police station. This aspect is dealt by learned Trial Court in paragraph 66. The Trial Court feels that such a contention stood refuted by denial of such suggestion by the police officers. We may only add that in order to establish that the injuries were suffered as a result of ill treatment by police, it was necessary on the part of accused No.2 to bring it on record that the accused had complained to the Magistrate about such ill treatment and there is no such suggestion on record. Discovery panchanama was drawn on 12.9.1995 in the afternoon. Thus accused No.2 was taken in police custody on the same day and yet there is no evidence of his having complained to the Magistrate of ill treatment at the hands of police.

10. For the reasons discussed in paragraphs 67 to 70, learned Trial Judge found that the spot panchanama (Exh.25) and description of the location, as given by panch witness Bharat (PW 5) supported by Investigating Officer Shri Kokate (PW 8), is reliable. The Trial Court also felt that the same corroborates the eye witness account as given by PW 4. From the panchanama (Exh.25) which includes inquest as well as spot description, it is evident that the investigating machinery had collected from the location traces of

blood stains from various articles inside the hut and it is necessary to refer to three reports of the chemical analysis at Exhs. 52, 53 and 54. From Exhs. 53 and 54, it is evident that accused Nos. 1 and 2 are persons of blood group "B" and "A" respectively. Exh.52 is report regarding as many as 22 articles and all articles are reported to be stained with human blood. Only articles Nos. 1, 2, 4 and 19 are successfully analysed for determination of blood group and those are having stains of human blood of group "AB". Articles 1 and 2 are the cloths of deceased and, therefore, it can safely be said that deceased was a person of blood group "AB". Eventually, article 4 saree must be said to be that of accused No.1 and article 19, half open shirt is that of accused No.2. Even these articles are stained with human blood of group "AB". The report thus probablises presence of both the accused at the time of occurrence and thus renders support to the eye witness account given by Dnyangeeta. We find no reason to disagree with the Trial Court on that aspect.

11. Advocate Shri Kamble has laid heavy emphasis on the admission of Bharat (PW 5) that the hut has only one entrance. On this aspect, the learned APP Smt. Bhosale has taken us to the contents of panchanama

(Exh.25) and more particularly, contents to the following effect :

"_____
_____
_____
_____
_____.

. These contents are relied upon by learned APP in order to point out that it was a hut and not a well built house. Even the rear side was covered with gunny bags and polythene sheet with a tin sheet used to strengthen the same and those were easily removable. The learned APP was thus justified in saying that Dnyangeeta can not be falsified because she claimed the accused to be coming from back side of the hut as a matter of practice. In the earlier part of the panchanama, it is evident that dead body was lying in a Nala at a distance of 125 ft. The Nala is 20 ft. broad and 7 ft. deep with water of 2 ft. depth. PW 5, in his cross examination on behalf of accused No.2, has admitted that there is a small Nala in front of the hut and big Nala on the back side. Although he has admitted

that he did not see any blood stains on the way between hut to gutter, on reference to panchanama (Exh.25) it is evident that even the flooring was recently washed. Thus, it is evident that precaution was taken to leave no traces of blood and, therefore, merely because there were no traces of blood from the hut to the Nala, that situation would not be sufficient to exonerate the accused persons, especially when there were blood stains still found inside the hut.

12. Discovery of Koyata, it was urged by Advocate Shri Kamble, should be disbelieved merely ;because of discrepancy that the panchanama and panch are discrepant as to whether the location is towards south of platform NO.1 or platform No.2. PW 5 has deposed that it was towards south of platform No.2. On reference to Exh.6, it is recorded to be towards south of platform No.1. We do not think that this discrepancy is sufficient to disbelieve the discovery.

13. Admission of PW 2 Suresh Magare to the effect that although he narrated everything within his knowledge to the police, police had not reduced it to writing, must be taken to be sign of partial hostility. On record at Exh.31, there is statement of Suresh, which

is treated as first information report. Advocate Shri Kamble also tried to gain ground by pointing out that copies of first information report in the prescribed form produced at Exhs. X-1 and X-2 do not bear signature of informant Suresh (PW 2). It is the contention of PW 8 that he recorded statement of Suresh at the location. He informed the details to the police station on telephone and he obtained Crime No. 69 of 1995 also on telephone. Exhs. X-1 and X-2 are technical formalities completed by police wherein police have summed up statement of PW 2 in the prescribed form. In this form, it is specifically recorded that the statement of PW 2 is recorded at the location and the same is treated as first information report and offence is registered on the basis of the same. No doubt, Exh.42 bears signature of Suresh (PW 2) whereas Exhs. X-1 and X-2 do not and PW 8 has explained that xerox copies of prescribed form were taken before Suresh signed the original. We have verified original form which is at Exh.42 and this signature of Suresh is obtained in acknowledgment of having received a copy of first information report. Absence of his signature and acknowledgment on Exhs. X-1 and X-2 will only lead to an inference that the copy of prescribed form was supplied to informant Suresh at a belated stage. This

can not lead to an inference that police, in their attempt to convert their mental conviction into a charge sheet, have obtained a false statement of Suresh. It may not be out of place to say that it was a lapse on the part of the Public Prosecutor in the Trial Court that attention of Suresh was not drawn to Exh.31 when he said that police did not write anything even when he narrated everything within his knowledge. After all, deposition before the Court is substantive piece of evidence and first information report can be used only for confirming or contradicting the deposition and is not a substantive piece of evidence. Otherwise, Suresh has stuck to his original narration to police, as recorded in Exh.31 and, therefore, the situation tried to be relied upon by Advocate Shri Kamble, renders no assistance to the defence.

14. Even if we are to disbelieve the evidence of Mohd. Kudrus because he is not supposed to remember the faces of each and every customer and especially when he is a hawker on railway over bridge, the eye witness account by Dnyangeeta supported by the evidence of PW 2 Suresh and PW 3 Chandrakant as also spot panchanama, in the light of depositions of Bharat (PW 5) and Shri Kokate (PW 8) together with discovery

panchanama proved by Subhash (PW 1), are sufficient to bring home the guilt. It can be perceived by taking collective effect of these pieces of evidence that the killing must have taken place inside the hut and the dead body was tried to be thrown away by the accused for the purpose of screening themselves.

. While pleading that deceased had not returned home since 9.9.1995 who was allotted a telephone booth for handicapped near Menon College, accused No.1 did not narrate as to what steps she took for searching her husband who was missing from three days. Even on 12th September 1995, a missing report has not come from accused No.1. The narration that deceased had not returned home from 9.9.1995 must be, therefore, rejected as an attempt to escape by relying upon false defence.

15. So far as argument of Advocate Shri Kamble that according to medical opinion, death has ensued within three hours from last meals, the same is not such weighty evidence or circumstance which will negate all the prosecution evidence. After all, what doctor deposed is only an opinion and such time factors can not be determined by accuracy. The time gap between last meals and the death, as opined by the Medical

Officer, is always to be taken with plus minus error. Timings narrated by the witnesses are also by approximation and, therefore, on the basis of medical evidence we may not unnecessarily infer that the death had ensued accurately at 4 a.m. or that the same need not be disbelieved by presuming that in that case the last meals will be required to be taken between 12 midnight to 1 a.m.

16. Learned APP Mrs. Bhosale has placed reliance upon observations of the Supreme Court in the matter of **Shankar Mahto Vs. State of Bihar (AIR 2002 SC 2857)** and more particularly observations in paragraph 8 of the judgment, which are to the following effect :

> "The I.O. found blood stains at the place of occurrence. In these circumstances, if the blood was not found around the place of occurrence, it alone will not be sufficient to disbelieve the evidence of informant, PW 2 and PW 4. Learned Amicus could not point out any flaw in reasoning of the High Court. Moreover, as the prosecution case has been supported in all material particulars by medical evidence as well apart from other unimpeachable evidence

already referred to by the High Court, **we are of the opinion that merely because the investigating officer did not find any trail of blood, the place of occurrence can not be doubted, especially when blood was found there by the police.** This being the position, we did not find any merit in this contention too."

. In the matter at hands, we have evidence of an eye witness and couple of witnesses speaking about events immediately preceding and succeeding the alleged occurrence. The material on record, if held convincing, the fact that trail of blood was not found in the hut to the location where dead body was found, need not cause any adverse effect on the prosecution merits.

17. In trying to attack the evidence regarding murder inside the hut at the hands of accused No.2, learned counsel has lost sight of the fact that as a natural course of human conduct, deceased husband was a family member of accused No.1 Jaishree. Apart from the spouses, two children Dnyangeeta (PW 4) who was then nine years old and her younger brother, were the only family members. The younger brother was in first standard when deposition was recorded in the year 1998.

In any case, none of the children were capable of committing murder of father. Although Suresh (PW 2) and Chandrakant (PW 3) began their chief examination by saying that mothers of deceased and appellant Jaishree were also the family members, it is volunteered by Chandrakant (PW 3) during the cross examination by accused No.1 that mothers of both accused No.1 and deceased had expired few months before the date of alleged incident. There was no attempt on the part of the defence to demonstrate that they were alive on the alleged day. If this fact situation is taken into consideration and if accused No.2 had not killed the victim, appellant accused No.1 shoulders greater responsibility of explaining the murder of her husband and her silence over missing of her husband, if he was so missing as claimed by her. Taking a view in the light of totality of the prosecution evidence, we feel that prosecution has adequately established that deceased Ramchandra was murdered inside the hut and thereafter thrown in the Nala to the back side of the hut. Total silence and desire to keep the incident suppressed attributed to accused No.1 by her own daughter, clearly establishes her having common intention although daughter has not claimed the mother to have dealt fatal blows to the husband. We,

therefore, find no reason to deviate from the view taken by the Trial Court in the matter.

18. For the reasons discussed hereinabove, the appeal merits dismissal and is accordingly dismissed. We confirm the impugned judgment and order dated 11.11.1998 delivered by Additional Sessions Judge, Greater Bombay in Sessions Case No. 88 of 1996.

. The Registrar (Judicial) share ensure that a certified copy of this judgment is furnished to the appellant / accused No.1 in person, free of costs, through prison authorities.

. Advocate Shri V.N. Kamble, who was appointed Amicus Curiae to conduct the appeal, completes his assignment with disposal of the appeal. We quantify his professional charges at Rs.2,500/-.

(SMT.V.K.TAHILRAMANI,J.) (N.V.DABHOLKAR,J.)

January 18, 2006.

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